

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE**
45 Fremont Street
San Francisco, CA 94105

RH05049799

January 5, 2007

**Title 10, Article 7.1
Proposed Sections 2355.1-2359.7
Title Insurance and Statistical Plan**

Summary and Response to Comments Received During 45-Day Comment Period

Pursuant to Gov. Code § 11346.9(a)(3), repetitive comments are aggregated, summarized and responded to as a group. Comments which were not specifically directed at the proposed regulations or procedures followed in proposing the regulations are irrelevant and have been summarized and dismissed as a group.

Additionally, because some comments reflect a more technical analysis of the proposed regulations, the summaries for those comments were not summarized as a group. Comments for pages 905-1304, which contain a more extensive technical analysis of the proposed regulations have been organized and summarized by comment volume number. The technical comments for Volume 3 are attached to the end of this summary and response.

Volume 3, Bates Nos. 905-1304

Bates Numbers of Corresponding Public Comments:

920, 921, 923, 925, 927, 928, 929, 934, 935, 936, 939, 940-41, 942, 943, 944, 951, 954, 958, 959, 960-61, 964, 967, 969, 971-2, 976, 980, 981-2, 984, 986, 989, 990-91, 993094, 996, 997-98, 1001, 1003, 1005, 1007, 1008, 1010, 1011-12, 1013, 1015-16, 1017, 1018, 1019-20, 1021, 1022-23, 1024, 1025, 1029, 1032-33, 1034, 1036-37, 1038, 1040-41, 1044-45, 1046, 1047-49, 1054, 1055-57, 1058, 1059, 1060-61, 1063A-C, 1066, 1067, 1069-70, 1071, 1073, 1075, 1078-79, 1081-82, 1085-86, 1087, 1107, 1110, 1112-1112A, 1113, 1116, 1117, 1121-22, 1123, 1124-25, 1127, 1129-30, 1132, 1133, 1134-35, 1136-37, 1138, 1139-41, 1142, 1144, 1145, 1148, 1149, 1150-51, 1152, 1154, 1155, 1156, 1157-58, 1163, 1201, 1203-06, 1212, 1214-16, 1217, 1218-19, 1222, 1223-24, 1228-1228A, 1229, 1230-31, 1232, 1233-34, 1235-36, 1240-41, 1242-43, 1244-45, 1246, 1248, 1250, 1251, 1252-53, 1254-55, 1256-57, 1258, 1259, 1260, 1262, 1264, 1265-66, 1268, 1269-71, 1274, 1275-76, 1277, 1278, 1290-92, 1293-94, 1295, 1297, 1281, 1298, 1300, 1304

Summary of Comments:

Fee Decreases and Other Aspects of the Regulations will Devastate the Title and Escrow

Industry (including Notary Signing Businesses).

A mandated interim escrow fee reduction (e.g., 27% from the year 2000 fees) would force small escrow companies, independent signing notaries and other escrow/title-related firms out of business. This will have a devastating impact on people in the title/escrow industry, and a disproportionate impact on women, who often are the sole (or primary) providers for their families. It will also have a disproportionate impact on seniors, minorities and others who might have difficulty entering (or re-entering) the mainstream work force.

Response to Comments:

The Commissioner rejects these comments. See Responses to Comment numbers E.14 and E.27.

Bates Numbers of Corresponding Public Comments:

956-57, 974, 977-78, 986, 1003, 1015-16, 1036-37, 1042-43, 1047-49, 1064, 1123, 1172, 1180-81, 1210-11, 1273, 1287-88

Summary of Comments:

Notaries and Other Escrow/Title Officers Already Are Facing High and Increasing Expenses.

The fee reduction for notaries and other escrow/title officers is disturbing given the increase in gas prices and other expenses, such as insurance. If anything, the regulations should raise their allowable fees.

Response to Comments:

The Commissioner rejects these comments. See Responses to Comment numbers E.4, E.12 and E.18.

Bates Numbers of Corresponding Public Comments:

922, 927, 933, 938, 940-41, 944, 946, 947, 951, 952, 953, 955, 956-57, 959, 960-61, 964, 966, 967, 968, 971-72, 974, 975, 976, 981-2, 983, 984, 985, 986, 987, 988, 993-4, 1000, 1001, 1002, 1007, 1010, 1015, 1017, 1021, 1022-23, 1024, 1030, 1032-3, 1038, 1046, 1054, 1055-57, 1060-61, 1062, 1064, 1067, 1069-70, 1071, 1073, 1075, 1077, 1084, 1085-86, 1087, 1107, 1112-1112A, 1115, 1116, 1117, 1118-19, 1121-22, 1123, 1124-25, 1129-30, 1133, 1134-35, 1139-41, 1146, 1147, 1152, 1153, 1155, 1156, 1161-62, 1167-68, 1169, 1171-72, 1177, 1178-79, 1182-83, 1184, 1187, 1188, 1196, 1201, 1203-06, 1208-09, 1210-11, 1212, 1213, 1218-19, 1220-21, 1222, 1229, 1230-31, 1235-36, 1238-39, 1248, 1258, 1259, 1260, 1262, 1272, 1281, 1282, 1289, 1295, 1298, 1299, 1304.

Summary of Comments:

The Regulations Will Have a Negative Impact on Consumers Including Seniors, the Disabled and Other People by Decreasing (or Eliminating) the Availability and Quality of Escrow/Title/Notary Services.

The proposed regulations will reduce (or eliminate) mobile notary services, which will hurt elderly and other consumers, who are increasingly reliant upon these mobile services to obtain reverse mortgages and other real estate or loan-related services.

The proposed regulations will lead to a deterioration of the services provided by notaries and

other escrow/title-related officers.

Consumers want and need the convenience of mobile notary services that will be negatively impacted by the proposed regulations.

The regulations will ultimately put many notaries out of business and, as a result, reduce the number of notaries to serve consumers and the escrow/title-related choices available to them.

Response to Comments:

The Commissioner rejects these comments. See Responses to Comment number N.1.

Bates Numbers of Corresponding Public Comments:

924, 927, 933, 935, 951, 961, 968, 977-78, 1001, 1003, 1034, 1059, 1060-61, 1084, 1087, 1112-1112A, 1113, 1115, 1117, 1121-22, 1123, 1153, 1161-62, 1168, 1171-72, 1181-83, 1195, 1199-1200, 1208-09, 1213, 1217, 1235-36, 1262, 1263, 1295, 1302-1302C, 1303.

Summary of Comments:

The Proposed Regulations Will Result in More Mistakes by Escrow/Title and Fraud.

The proposed regulations will hurt consumers because the companies will not have the time to train their employees to be competent loan signing agents or have enough competent agents, thereby creating a risk for fraud, more mistakes and precious time lost.

Response to Comments:

The Commissioner rejects these comments. See Responses to Comment numbers E.29 and E.23.

Bates Numbers of Corresponding Public Comments:

926, 928, 943, 964, 971-72, 993-94, 1009, 1042-43, 1047-49, 1052-53, 1055-57, 1080, 1118-19, 1157-58, 1165-66, 1189-90, 1220-21, 1223-24, 1278-79, 1303.

Summary of Comments:

CDI's Lack of Understanding About the Business

The proposed regulations do not show a good understanding of what escrow and title actually do. I'm sure if you compared the fees that we get to the liabilities and responsibilities that we carry, perhaps you would think differently.

It is intriguing that the consulting firm used for the proposed regulations is out of state. It does not understand California "closing practices," and did not even consult with the California Escrow Association or the California Escrow Institute of California.

Response to Comments:

The Commissioner rejects these comments. See Responses to Comment numbers E.5, E.12, E.13, E.16, E.20, E.22 and E.23.

Bates Numbers of Corresponding Public Comments:

926, 929, 943, 946, 956-57, 974, 975, 977-79, 995, 997-98, 1004, 1006, 1009, 1013, 1017, 1019-

20, 1036-37, 1040-41, 1047-49, 1050, 1052-53, 1054, 1055-57, 1063A-C, 1075, 1109, 1118-19, 1131, 1136-37, 1148, 1150-51, 1154, 1155, 1157-58, 1159, 1160, 1163, 1165-66, 1167-68, 1170, 1173, 1180-81, 1182-83, 1188, 1189, 1194, 1195, 1197-98, 1199-1200, 1214-16, 1240-41, 1246, 1256-57, 1265-66, 1267, 1268, 1269-71, 1273, 1275, 1277, 1285, 1286, 1287-88, 1293-94, 1302-1302C, 1303.

Summary of Comments:

Escrow/Title/Notary Fees are Reasonable

Includes comments such as:

Notary fees are more than reasonable, especially when you consider the demands of their jobs.

The proposed regulations do not consider the demands placed on escrow personnel, the value of the services they provide, and the fact that people in the escrow business do not earn big fat checks like the ones they cut to the realtors, mortgage brokers, and lenders, and nor do we receive any fancy gifts, bribes, or kickbacks for all the work they do for these other players.

Escrow officers (including notaries) have extremely demanding jobs and add a great deal of value to real estate transactions.

In many other states, escrow functions are handled by attorneys who charge much more than escrow/title officers do.

Notaries are at the bottom of the real estate food chain; they are the most cost effective part of the transaction.

Do you plan to put a cap on the fees charged by attorneys and other real estate players?

Your proposal to reduce escrow/title fees could return California escrow functions to the attorneys, thereby costing consumers legal fees which are incredibly higher than ours.

Response to Comments:

The Commissioner rejects these comments. See Responses to Comment numbers N.1, E.5, E.7, E.9, E.13, E.14, E.15, E.24, E.26 and E.28.

Bates Numbers of Corresponding Public Comments:

933, 1002, 1034, 1264.

Summary of Comments:

Notary Fees Should Be Dictated by the Market Not by the CDI

The notary fees should be set by all the parties involved in a real estate transaction.

Response to Comments:

The Commissioner rejects these comments. See Responses to Comment number N.1.

Bates Numbers of Corresponding Public Comments:

943, 969-70, 971-72, 975, 993-94, 1002, 1008, 1009, 1011-12, 1019, 1024, 1035, 1036-37, 1039, 1040-41, 1044-45, 1047-49, 1051, 1052-53, 1054, 1055-57, 1063A-C, 1080, 1127-28, 1145, 1150-51, 1157-58, 1159, 1164, 1165, 1174-76, 1180-81, 1185, 1186, 1189, 1194, 1195, 1203-1206, 1214-16, 1223-24, 1240-41, 1242-43, 1244-45, 1246, 1250, 1251, 1252-53, 1256-57, 1268, 1269-71, 1275, 1277, 1278-79, 1285, 1287, 1290-92, 1293-94, 1302-1302C.

Summary of Comments:

Competition in the Escrow/Title Business Already is Very Fierce.

Competition is based on price and service, not kickbacks (and to suggest that escrow offices obtain business through kickbacks is highly offensive).

Response to Comments:

The Commissioner rejects these comments. See Responses to Comment numbers E.8, E.10, E.22 and E.23.

Bates Numbers of Corresponding Public Comments:

951, 988.

Summary of Comments:

The proposed regulations will reduce the number of notaries and, as a result, impose an added burden to the already tremendous workload of title and escrow agents.

Response to Comments:

The Commissioner rejects these comments. See Responses to Comment number N.1.

Bates Numbers of Corresponding Public Comments:

950

Summary of Comments:

I would support a more regulated fee structure instead of the proposed regulations, which will hurt people in the lending industry and their loved ones.

Response to Comments:

The Commissioner rejects these comments. See Responses to Comment number X.12.

Bates Numbers of Corresponding Public Comments:

932.

Summary of Comments:

If notary fees are cut, notaries will tack on the cuts to the travel fees and the Commissioner will lose thousands of votes.

Response to Comments:

The Commissioner rejects these comments. See Responses to Comment number N.1.

Bates Numbers of Corresponding Public Comments:
1233-34.

Summary of Comments:
The proposed regulations will only benefit the large title insurance companies.

Response to Comments:
The Commissioner rejects these comments. See Responses to Comment numbers X.1 and T.18.

Bates Numbers of Corresponding Public Comments:
1059

Summary of Comments:
Out-of-State Lenders Will Leave CA Loan Business. Because it will be more difficult to close, out-of-state loan companies may bow out of the California loan market as a result of these pending regulations.

Response to Comments:
The Commissioner rejects these comments. See Responses to Comment numbers X.12.

Bates Numbers of Corresponding Public Comments:
962-63.

Summary of Comments:
Formula in Regulations is Too Complex. I am concerned that the formula is highly complex, creating a barrier for members of the public to fully ascertain fairness.

Response to Comments:
The Commissioner rejects these comments. See Responses to Comment numbers A.9, A.12 and A.13.

Bates Numbers of Corresponding Public Comments:
968, 996, 1011, 1015-16, 1030-31, 1035, 1042-43, 1081-82, 1191-93, 1242-43, 1251, 1275-76.

Summary of Comments:
The Regulations are politically motivated.

Response to Comments:
The Commissioner rejects these comments. See Responses to Comment number X.19.

Bates Numbers of Corresponding Public Comments:
915

Summary of Comments:

There are more pressing issues for CDI.

Response to Comments:

The Commissioner rejects these comments. See Responses to Comment numbers E.1 and X.19.

Bates Numbers of Corresponding Public Comments:

960-961.

Summary of Comments:

It would make more sense to regulate in-house fees charged by the title and escrow companies, and leave outside services like independent appraisers and notaries out of the equation.

Response to Comments:

The Commissioner rejects these comments. See Responses to Comment number N.1.

Bates Numbers of Corresponding Public Comments:

960-61, 977-79, 1044-45.

Summary of Comments:

The state already regulates the maximum amount a notary can charge per signature. Notaries already are heavily regulated.

Response to Comments:

The Commissioner rejects these comments. See Responses to Comment number N.1.

Bates Numbers of Corresponding Public Comments:

1044.

Summary of Comments:

The regulations will have an anti-competitive effect by removing independent escrow companies from the market.

Response to Comments:

The Commissioner rejects these comments. See Responses to Comment number E.27.

Bates Numbers of Corresponding Public Comments:

1051

Summary of Comments:

If rate changes must come, they should come from the escrow association working as a body to reduce these fees as a whole.

Response to Comments:

The Commissioner rejects these comments. See Responses to Comment numbers E.1, E.2.

Bates Numbers of Corresponding Public Comments:

968

Summary of Comments:

The regulations won't help consumers in the long run because of hidden costs.

Response to Comments:

This comment is not specifically directed at the proposed action or the procedures followed by the Commissioner in proposing or adopting the action. Therefore, no response is necessary. (Gov't Code Section 11346.9(a)(3)).

Bates Numbers of Corresponding Public Comments:

990-91, 1011, 1052, 1063A-C, 1067, 1165-66, 1173, 1252-53, 1269-71

Summary of Comments:

We support the Department's enforcement efforts against companies using illegal rebates, but it's not fair to penalize everyone for the actions of a few.

Response to Comments:

The Commissioner rejects these comments. See Responses to Comment number X.19.

Bates Numbers of Corresponding Public Comments:

1249, 1280

Summary of Comments:

I support regulations that roll back title/escrow fees by 27%.

Response to Comments:

This comment is generally in support of the Proposed Regulations; accordingly, no response is necessary.

Bates Numbers of Corresponding Public Comments:

990-91.

Summary of Comments:

UTCs and other title/escrow businesses support non-profit organizations in the community and without support from the title/escrow companies, the non-profits will not survive, hurting consumers.

Response to Comments:

This comment is not specifically directed at the proposed action or the procedures followed by the Commissioner in proposing or adopting the action. Therefore, no response is necessary. (Gov't Code Section 11346.9(a)(3)).

Bates Numbers of Corresponding Public Comments:

1167-68, 1188.

Summary of Comments:

I suggest you “streamline other fees such as processing, escrow or fees that list no explanation of what the fee will provide.”

Response to Comments:

This comment is not specifically directed at the proposed action or the procedures followed by the Commissioner in proposing or adopting the action. Therefore, no response is necessary. (Gov’t Code Section 11346.9(a)(3)).

Bates Numbers of Corresponding Public Comments:

1180-81.

Summary of Comments:

Virtual escrow seems to be a way for title companies to use a loophole to offer kickbacks to the mortgage brokers.

Response to Comments:

This comment is not specifically directed at the proposed action or the procedures followed by the Commissioner in proposing or adopting the action. Therefore, no response is necessary. (Gov’t Code Section 11346.9(a)(3)).

Bates Numbers of Corresponding Public Comments:

1191-93.

Summary of Comments:

Commr. Garamendi’s proposal is punitive, malicious and void of good sense. It also discriminates against title insurance companies.

Response to Comments:

The Commissioner rejects these comments. See Responses to Comment numbers E.1 and E.2.

Bates Numbers of Corresponding Public Comments:

1192

Summary of Comments:

The regulations are based on comparisons to casualty insurance, but miss important distinctions between the two, including the fact that a title insurance premium is collected one time and the policy remains in effect as long as the insured, or his or her heirs, have an interest in the insured property.

Response to Comments:

The Commissioner rejects these comments. See Responses to Comment number T.4.

Bates Numbers of Corresponding Public Comments:
1191-93.

Summary of Comments:

Use existing law to punish the givers and the receivers of kickbacks and any existing problems will go away.

Response to Comments:

The Commissioner rejects these comments. See Responses to Comment number X.17.

Bates Numbers of Corresponding Public Comments:
1202

Summary of Comments:

“[M]any notaries, such as myself, have received phone calls from Title companies and other mortgage companies outside of California. How would we be able to sign for borrowers that are in state that have loans handled by companies outside of the state? We would basically only be able to target companies outside of the state, which would definitely affect a lot of individuals who hold notary licenses.”

Response to Comments:

The Commissioner rejects these comments. See Responses to Comment number N.1.

Bates Numbers of Corresponding Public Comments:
1226

Summary of Comments:

“I believe the real issue at hand is the overpricing of title insurance premiums. If this inequity is taken care of Title Insurers will no longer be able to run their escrow departments at a loss or on the ragged edge of profit, competition is restored and the consumer will benefit. Regulation RH05049799 as it is presently written will have the effect of putting hundreds of Independent Escrow Companies out of business and creating a near monopoly in the closing of real estate transactions for the title industry, all financed by overpriced title insurance policies. This would not be in the best interest of the general public.”

Response to Comments:

The Commissioner rejects these comments. See Responses to Comment number E.27.

Bates Numbers of Corresponding Public Comments:
1302B

Summary of Comments:

“I cannot address an issue like a suggested lack of competition in the marketplace adequately without reminding you that there are many consumers who are truly given no choice in the buying decision when purchasing title and escrow services. I strongly recommend you consider,

in cooperation with the Department of Real Estate, the buyers and sellers who choose a ‘closed office’ real estate company that maintains its own ‘in house’ providers for title insurance and escrow services. Though buyers and sellers may receive a disclosure about the availability of services from other providers, they are strongly influenced by their agent to use the real estate company’s providers, often because of favorable treatment conferred upon the real estate agent by the managing broker, such as larger portion of the gross commission earned and a reduction in the agent costs for office expenses and advertising. In some cases, the fees they pay for these services are extraordinary and greater than those offered by title insurance and escrow companies.”

Response to Comments:

This comment is generally in support of the Proposed Regulations; accordingly, no response is necessary.

Bates Numbers of Corresponding Public Comments:

1302C

Summary of Comments:

“The Department of Insurance should explore other ways both to clarify key sections of the Insurance Code and to deter or penalize inappropriate corporate behavior. Broad rate reductions will not result in better corporate citizens or in greater consumer value.”

Response to Comments:

The Commissioner rejects these comments. See Responses to Comment number X.17.

Bates Numbers of Corresponding Public Comments:

1302C

Summary of Comments:

“Rather than rush to enact arbitrary proposals, I encourage the Department to undertake a new unbiased study of the industry that is both thorough and that is developed in cooperation with escrow professionals who are familiar with the industry within California as well as with the cooperation of other California escrow regulators, to draw conclusions that are logical and supported by the evidence, and to make recommendations in conjunction with the industry that are meaningful and lasting.”

Response to Comments:

The Commissioner rejects these comments. See Responses to Comment number E.5.

Bates Numbers of Corresponding Public Comments:

1114

Summary of Comments:

“There is great concern and confusion by borrowers over the fees listed on many settlement statements. . .The current laws require that the lender cannot use their own notary for the loan

signing because that service must be performed by a disinterested third party to maintain impartiality on the notary's part. Why do we allow the lenders to circumvent the law by creating a subsidiary signing service company, allowing them to keep up to 2/3 of the fee? That loophole should be closed so that the notary fee is not in any way connected to the lender's profit. The lender should not be allowed to maintain any ownership-like affiliation with the signing services. A notary should not appear to be working for the lender, otherwise the disinterested third party does not appear to be disinterested at all."

Response to Comments:

This comment is not specifically directed at the proposed action or the procedures followed by the Commissioner in proposing or adopting the action. Therefore, no response is necessary. (Gov't Code Section 11346.9(a)(3)).

Bates Numbers of Corresponding Public Comments:

1114

Summary of Comments:

"[T]here should be a limit to the number of notaries in each county based on the county's population statistics. This will increase the number of signings available to existing notaries and reduce the number of "hobby notaries," so that the profession can be viewed as a respected and desired career opportunity. This policy in turn will attract serious professional while discouraging the "hobby notary."

Response to Comments:

This comment is not specifically directed at the proposed action or the procedures followed by the Commissioner in proposing or adopting the action. Therefore, no response is necessary. (Gov't Code Section 11346.9(a)(3)).

Bates Numbers of Corresponding Public Comments:

1114

Summary of Comments:

"[T]he state should enact law that further standardizes the settlement statement and offers a definitions page for every line item on the statement. The definitions should disclose to the borrower in a non-misleading manner what each and every entry means. That will discourage lenders from hiding profits in places where they have no business being, such as the notary fee."

Response to Comments:

This comment is not specifically directed at the proposed action or the procedures followed by the Commissioner in proposing or adopting the action. Therefore, no response is necessary. (Gov't Code Section 11346.9(a)(3)).

Bates Numbers of Corresponding Public Comments:

1286

Summary of Comments:

Commr. Garamendi should go after mortgage brokers instead.

Response to Comments:

This comment is not specifically directed at the proposed action or the procedures followed by the Commissioner in proposing or adopting the action. Therefore, no response is necessary. (Gov't Code Section 11346.9(a)(3)).

Bates Numbers of Corresponding Public Comments:

1227

Summary of Comments:

“The HUD killer is title insurance – that’s the rip off, sir.”

Response to Comments:

This comment is not specifically directed at the proposed action or the procedures followed by the Commissioner in proposing or adopting the action. Therefore, no response is necessary. (Gov't Code Section 11346.9(a)(3)).

Bates Numbers of Corresponding Public Comments:

1299

Summary of Comments:

If people are inconvenienced, they may not enter into real estate transactions, ultimately hurting the California economy.

Response to Comments:

This comment is not specifically directed at the proposed action or the procedures followed by the Commissioner in proposing or adopting the action. Therefore, no response is necessary. (Gov't Code Section 11346.9(a)(3)).

Bates Numbers of Corresponding Public Comments:

1212

Summary of Comments:

If cutbacks are made in this business, I predict that illegal operations will occur. Sellers, buyers, loan officers and brokers will try to close loans, purchases, refinances, etc. on their own without the proper help of escrow and title.

Response to Comments:

This comment is not specifically directed at the proposed action or the procedures followed by the Commissioner in proposing or adopting the action. Therefore, no response is necessary. (Gov't Code Section 11346.9(a)(3)).

Bates Numbers of Corresponding Public Comments:

931, 962-83

Summary of Comments:

Support for the regulations.

Response to Comments:

This comment is generally in support of the Proposed Regulations; accordingly, no response is necessary.

TITLE 10. INVESTMENTS
CHAPTER 5. INSURANCE COMMISSIONER
Article 7.1
***TITLE INSURANCE STATISTICAL PLAN
AND RELATED RULES GOVERNING RATES AND CHARGES***

Summary and Response to Technical Comments Received During
45-day Comment Period

Volume 3, Comment No. 1089-1106 (same as comments 2799-2815):

Commentator: Jeanne Flynn Martin on behalf of Commerce Title Insurance Company

Date of Comment: Received 8/25/06

Type of Comment: Written

Summary of Comment (page 1-3):

This passage summarizes the commenter's general concerns about the proposed regulations, the commenter's affiliation and general business experience in California as well as the general laws which describe the limitations on an agency's power to promulgate regulations that are necessary and not in conflict with existing law.

Response to Comment:

This portion of the comment is not specifically directed at the Commissioner's proposed regulations or to the procedures followed in proposing the regulations. Additionally, this portion of the comment reflects summaries of comments that are summarized and responded to in greater detail below. No response is, therefore, necessary. (Gov. Code section 11346.9.)

Summary of Comment (page 3-4):

Insurance Code section 12401 states that the purpose of the title rate regulation statutes is to encourage competition and is not intended to give the Commissioner the power to fix and determine a rate level by classification or otherwise. This prohibition would include a prohibition on setting a maximum rate, as rates are to be determined by the market and not the Commissioner. The Legislature underscored its intent to prohibit the Commissioner from

imposing rate caps by providing in the statistical plan provisions that the Commissioner does not have the “power to fix and determine a rate level by classification or otherwise.” Because the Commissioner’s proposed regulations seek to do exactly that, they conflict with applicable law.

Response to Comment:

The Commissioner rejects this comment. The proposed regulations do not “fix” or “determine” rate levels. They define the level above which the rate is excessive. Companies are free to compete by charging any rate they wish so long as the rate is not “excessive.” (Ins. Code § 12401.3.) It has long been understood that the code authorizes the Commissioner to prohibit excessive rates and that doing so does not constitute the proscribed fixing or determination of rates. The commenter is incorrect in asserting that the proscription against fixing or determining rates precludes the Commissioner from finding a rate excessive or from defining the value above which the rate is excessive. The facile assertion that rates are to be determined solely by the market is refuted by the statutory authority of the Commissioner to prevent excessive rates, precisely when he finds that the market is not sufficiently competitive to ensure effective price competition.

Summary of Comment (page 4-5):

Because the regulations conflict with applicable law, the Commissioner’s perceived short-term benefits to consumers which would result from reduced title and escrow rates cannot justify or legitimate the proposed regulations. Regulations that are inconsistent with the existing law are void, despite any altruistic motivations for such regulatory proposal.

Response to Comment:

The Commissioner rejects this comment. While it is agreed that regulations that conflict with statutory law are void, no such conflict exists between the proposed regulations and the Insurance Code.

Summary of Comment (page 5-6):

A rate cannot be held excessive under Insurance Code section 12401.3 unless it is (1) unreasonably high for the insurance and (2) there is an absence of a reasonable degree of competition. As section 12401.3 demonstrates, the Legislature did not authorize the Commissioner to make industry-wide rate determinations or to specify discounts applicable to base rates.

Response to Comment

The Commissioner rejects this comment. The comment correctly summarizes a portion of section 12401.3, but the assertion that this section demonstrates the absence of authority to make industry-wide rate determinations is a non-sequitur. And the proposed regulations do not specify discounts that must be provided, they simply take into account existing (and potential future)

industry practices with respect to discounting when calculating the maximum rate. Each company may apply a greater or lesser discount of its choosing, so long as the resulting rate does not exceed the maximum permitted.

Summary of Comment (page 6)

The title and escrow industries provided significant evidence in conjunction with the January 5, 2006 workshop which confirmed that the Competition Report is inaccurate and unreliable. This evidence includes papers written by Mr. Lipshutz, Messers. Stangle and Strombom, Dr. Hazleton, Dr. Vistnes and Mr. Miller. Thus, because the Commissioner's finding of a lack of competition relies upon the findings of the Competition Report, the findings have been discredited and represent an improper means to achieve an illegal end.

Response to Comment

The Commissioner rejects this comment. He has responded to the comments enumerated by the commenter elsewhere in this file. The Commissioner has concluded that the findings of lack of competition are sound and that the proposed regulations are the appropriate legal response to that finding.

Summary of Comment (page 6, footnote 20):

The Commissioner must concede that reverse competition has existed since at least 1977. Despite the fact that thousands of rate filings have been made between 1977 and the present, the Commissioner never found that the market is incapable of promoting competition until now. In fact, a number of title entities who participate in the market and provided comments at the Department's January 5, 2006 workshop agree that the market is characterized by intense competition.

Response to Comment:

The Commissioner rejects this comment. The absence of prior corrective action is no reason not to take such action when the evidence of the need is before him. Furthermore, the failure of companies to lower their rates since 2000, in light of the sharp increase in home prices, has both confirmed the absence of competition and given greater urgency to the need for corrective action.

Summary of Comment (page 7-8):

While rates have increased for other lines of insurance, as confirmed by the studies authored by Messers. Stangle and Strombom, the commenter's company has filed for title rate decreases in connection with homeowners title policies. These rates have been reduced by as much as 20% for some owner's policies. These reductions were made at a time when the costs of doing business have risen, as state and federal laws create new and growing obligations for financial accounting, compliance, fraud prevention and information security. Thus, the Commissioner's

finding of a lack of competition cannot be considered credible – particularly when that finding is premised solely on the Competition Report.

Response to Comment:

The Commissioner rejects this comment. He responds to the cited comments of others elsewhere in this file. The commenter has failed to provide evidence of widespread reductions in rates, and the Commissioner has not seen rate-filings evincing any such broad reductions. Small reductions of limited scope do not offer a substantial reason not to adopt the proposed regulations. The rising cost of doing business – and the corresponding sources of lower costs, such as automation – are all captured in the proposed regulations.

Summary of Comment (page 8):

Aside from a short, unsupported statement in the July 3, 2006 Staff Report, the Commissioner has made no finding that any specific rate is unreasonably high for the insurance or other services provided. Because the Commissioner has not made a finding that any rate – or even all rates – are excessive, the proposed regulations are in conflict with Insurance Code section 12401.3

Response to Comment:

The Commissioner rejects this comment. The proposed regulations do not contain a finding of excessiveness of any specific rate; rather, they contain the means by which it may be determined whether a specific rate is excessive. That is fully consistent with all applicable provisions of the Insurance Code.

Summary of Comment (page 8-9):

The Commissioner cannot make a determination as to whether a rate is excessive, inadequate or unfairly discriminatory until he has considered past loss experience within or outside of the state, a reasonable margin for profit both countrywide and within the state, and other judgment factors deemed relevant within and outside of the state. The Competition Report and July 3, 2006 Staff Report demonstrate that the Commissioner has not considered these factors. Because of this clear disregard for the Legislature's direction set forth in Insurance Code section 12401.3, Commissioner lacks authority to adopt these regulations.

Response to Comment:

The Commissioner rejects this comment. While it is true, as the commenter asserts, that a determination that a specific rate is excessive must take into consideration past loss experience within or outside of the state, a reasonable margin for profit both countrywide and within the state, and other judgment factors deemed relevant within and outside of the state, the regulations do precisely that, providing an allowance for loss experience, profit, and other relevant factors.

When they are applied to a specific rate, if the application results in a finding of excessiveness, that finding is based in relevant part on those factors.

Summary of Comment (page 9):

Insurance Code section 12401.5 reconfirms that the Commissioner is prohibited from regulating rates in any way. In particular, section 12401.5 confirms that the statistical plan cannot be developed or used for this purpose. The proposed regulations clearly indicate that the statistical plan data will be the basis for the determination of maximum title insurance and escrow rates. Using the statistical plan for this purpose is expressly prohibited under section 12401.5 and therefore the proposed regulations directly conflict with this section.

Response to Comment:

The Commissioner rejects this comment. The commenter has proffered no basis for the comment's conclusion that Insurance Code section 12401.5 may not use the results from the statistical plan to determine maximum rates. On the contrary, section 12401.5 clearly contemplates that the statistical plan and financial data are intended to function as an "aid to uniform administration of rate regulatory laws of this state" and that the information may be used "in reviewing and evaluating individual rate filings by title insurers pursuant to the standards set forth in Section 12401.3."

Summary of Comment (page 10-11):

The Commissioner cannot demonstrate a reasonable necessity for the proposed regulations as required by Government Code section 11342.2. Not only is the Commissioner's finding of an absence of rate competition fallacious, but there is no basis for contending that the existing title market is structurally incapable of promoting rate competition. As the California Land Title Association has noted, there are a number of methods that could be introduced to promote rate competition, including an on-line rate comparison guide similar to the one implemented in Colorado. The Commissioner's refusal to undertake this obvious solution is clearly demonstrative of the unreasonable nature of the proposed regulation.

Response to Comment:

The Commissioner rejects this comment. The comment is explicitly based on denial of the finding of the absence of a reasonable degree of competition, which denial the Commissioner has rejected. The comment is further based on a faulty reading of Insurance Code section 12401.3. A finding that a reasonable degree of competition does not exist leads, under that section, not to authority for the Commissioner to take steps to increase competition but to authority to find rates excessive. The Commissioner has reasonably determined that the proposed regulations are the appropriate and necessary means to implement this provision.

Summary of Comment (page 11):

The Commissioner has failed and refused to respond to any of the numerous fatal defects and errors, both analytical and empirical, which were identified within the Competition Report by the title and escrow industries. This also demonstrates the unreasonableness of the proposed regulation.

Response to Comment:

The Commissioner rejects this comment. He has, throughout this file, summarized and responded in detail to all of the relevant comments.

Summary of Comment (page 11-12):

The statistical plan is integral to the proposed regulations. As is set forth in Insurance Code section 12401.5(c) the statistical plan must be adopted in accordance with the provisions of the Government Code. For the reasons discussed above, the proposed regulation conflicts with the applicable title insurance statutes, including the Legislature's instructions that "nothing ... is intended to give the commissioner power to fix and determine a rate level by classification or otherwise."

Response to Comment:

This is merely a restatement of earlier arguments which are summarized and responded to above; no further response is, therefore, necessary.

Summary of Comment (page 12-13):

Government Code section 11346.3 requires state agencies to assess the potential for adverse economic impact on California businesses and individuals, including the need to avoid unnecessary or unreasonable regulations or reporting, recordkeeping or compliance requirements. The proposed regulations are a "poster child" of why this statute was adopted. Almost 200 pages of the regulations provide detailed transaction-level reporting requirements and would require the commenter's organization to report a total of 30 statistical reports. Much of the data required by the statistical plan is not currently collected by the commenter's organization and is not supported by any of data collection systems used by the organization. Not only would this data collection require a detailed accounting of individual employee time, but it may also require the reporting of information that is protected from reporting due to federal and state laws governing information privacy.

Response to Comment:

The Commissioner rejects this comment. While the Commissioner recognizes the detail required and the cost associated with reporting, he does not credit the claim that it would be unduly burdensome to comply. Specifically with respect to the transaction-level reporting, each item required to be reported is information that is already keyed into a computer in the course of producing the title and escrow products. This information should not have to be rekeyed. While

the commenter's organizations may not currently have written or purchased the programs necessary to extract the information, the Commissioner fully expects that such a capability can be economically obtained, either by in-house programming or use of commercial software. With regard to possible federal or state laws, the commenter has identified no law that would prohibit a regulated company from providing any of the enumerated information to its state regulator.

Summary of Comment (page 13):

Government Code section 11346.3 should be read in harmony with Insurance Code section 12401.5, which encourages the Commissioner to consider statistical plans used by other states in order to develop uniform statistical reporting plans. The commenter is not aware of any evidence that would suggest that the Commissioner made an effort to comply with this requirement. In fact, the data required by the Commissioner's statistical plan appears to require the reporting of data that is not required in any other state.

Response to Comment:

The Commissioner rejects this comment. He is aware of, and has considered, data practices among California companies and in other jurisdictions and has concluded none meets the needs of the proposed regulations. In particular, the Commissioner's decision has been informed by the Department's experience in promulgating two data calls to California title underwriters and underwritten title companies, which produced widespread claims that the companies' existing systems were not adequate to respond to the requests and, when data were reported, produced widespread inadequacies in the data and in the definitions of data elements. Furthermore, the statute the commenter cites merely states that the commissioner *may* consider the specified matters, not that he must do so.

Summary of Comment (page 14-15):

Government Code section 11346.3 requires the Commissioner to assess the potential for adverse economic impact on businesses and individuals, including the impact on business' competition relative to businesses in other states. Thus, the Government Code requires the collection of information from the affected parties prior to submitting the proposed regulations. Although the Commissioner discusses the impact on affected businesses in the Initial Statement of Reasons, there is no empirical data or analysis of how businesses will be affected. Moreover, the statements made are inaccurate, such as the suggestion that the costs of compliance with the statistical plan will be modest in light of the costs already incurred by title entities in the current collection and reporting requirements. While the commenter has not had sufficient time to fully assess the financial cost of implementation, it is unquestionable that those costs would be substantial. In fact, even the cost of properly reviewing and considering the implementation costs would be substantial, and at present, are incalculable.

Response to Comment:

The Commissioner rejects this comment. He has, in fact, carefully considered the costs of compliance and determined them to be justified by the need for effective rate-regulation of this industry with over \$4 billion in California revenue. He has also carefully considered the comments submitted in this file regarding the costs of compliance. The commenter has not identified any empirical data or analysis the Commissioner should consider that he has not considered, and the commenter has proffered no evidence of probative value on the cost of compliance.

Summary of Comment (page 15):

Government Code section 11346.3 requires the Commissioner to assess the potential for adverse economic impact on businesses and individuals, including the impact on business' competition relative to businesses in other states. Thus, prior to proposing the regulations, the Commissioner was required to solicit information from the title and escrow industries, concerning the impact on business in other states. The commenter is unaware of any request by the Commissioner for the regulated entities to provide such information. The Commissioner has, accordingly, failed to comply with Government Code section 11346.3.

Response to Comment:

The Commissioner rejects this comment. The Commissioner is, in fact, considering any comments he receives regarding the impact of the proposed regulations on the ability of California businesses to compete with businesses in other states. This commenter has tendered no such information. Furthermore, it is not clear how the proposed regulations could have any effect in this industry, since out-of-state companies are not authorized to write title insurance in California and the regulations only apply to the companies' California business. Nor has the commenter tendered any evidence of any existing or potential interstate competition in title or escrow markets.

Summary of Comment (page 15-16):

The proposed regulations violate Government Code section 11346.3, which requires an agency proposing to adopt a regulation to assess the extent to which it will affect the creation or elimination of California jobs, the creation or elimination of existing California businesses, and the expansion of California businesses. While the Commissioner recognizes an impact in his rulemaking file, he does so in conclusory terms and has not properly assessed the magnitude of the impact. The proposed regulations will substantially decrease revenue for each of the companies, while at the same time, increasing the time and expenses necessary to collect and report data. While the commenter has not had sufficient time to fully assess these costs, it is clear that even the cost of properly assessing these costs would be substantial. This is exacerbated by the fact that the California real estate market is in a downturn. Thus, the commenter expects that reductions in workforce and branch office closures are likely, which would ironically decrease competition.

Response to Comment:

The Commissioner rejects this comment. The Commissioner has considered the impact on jobs in California. What the commenter does not acknowledge is that the proposed regulations are designed to prohibit rates that would not prevail in a competitive market. It is entirely possible that such rates currently exist and that bringing them down to the levels that a competitive market would produce will reduce revenue. It may also be the case that it will reduce employment in the regulated industry. But there is no ground in law or sound policy why excessive rates should be maintained simply because the companies collecting them may use some of the excess to employ people who might not have been employed in a competitive market. On the contrary, job-elimination is not a recognized defense to excessive rates under the Insurance Code.

Summary of Comment (page 16-17):

Because various new issues have been raised which concern the length and complexity of these regulations and various material and statutory violations have been identified, the commenter requests that the Commissioner continue the rulemaking hearing for 60 to 90 days so that the Commissioner can properly consider the issues presented in this comment as well as those issues presented by other members of the public. This procedure is permitted by Government Code section 11346.8(e), which provides that the Legislature intends for agencies to consider granting a request by a member of the public for additional time if granting the request is practical and will not unduly delay action on the regulation. The commenter, accordingly, formally makes such a request.

Response to Comment:

The Commissioner rejects this comment. As the volume of this rulemaking file attests, these regulations have been the subject of voluminous comments by numerous members of the industry and the general public. The commenter has not identified any statutory violations in the proposed regulations and has not specified what necessary comments could be provided with additional time that could not have been made during the statutory 45-day comment period.